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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,208

11/16/2003

Catherine L. Funderburk

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11/07/2008

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EXAMINER

DESAI, ANISH P

ART UNIT

PAPER NUMBER

1794

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/714,208	<b>Applicant(s)</b> FUNDERBURK ET AL.	
	<b>Examiner</b> ANISH DESAI	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-34 is/are allowed.
- 6) ☒ Claim(s) 35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicant's arguments in response to the Office action dated 06/17/08 have been fully considered.
2. Claims 1-29, 37 and 38 are cancelled. Claims 30-36 are pending.
3. Claims 30-34 are continued to be indicated as allowable as suggested by the previous Examiner in 04/06/07 Advisory Action. Additionally, in accordance with MPEP 704, full faith and credit is given to the search and action of the previous Examiner.
4. The 35 USC Section 112-second paragraph rejections to claims 37 and 38 are considered moot in view of the claim cancellation. However, in view of the present amendment to claim 35, a new 35 USC Section 112-second paragraph rejection to claims 35-36 is made.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 35 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Newly amended claim 35 now recites "a second layer comprising a color former coated thereon". The recitation of "comprising a color formed coated thereon" is ambiguous. Because, it is not clear whether the color former is coated as an additional layer on top of a second layer or whether the second layer itself includes a color former. It appears from the specification that the second layer itself comprises a color former.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 35-36 are rejected under 35 U.S.C. 103(a) as obvious over Posa et al. (US 6,767,628B1), substantially as set forth in the previous Office Action.
8. Posa discloses a roll of tape (see Figures) that includes a material which enhances the visibility of a newly formed edge (abstract). The tape of Posa includes a backing 404 (support material) having a coating of an adhesive 306 (see Figure 3 and Figure 4).
9. With respect to the newly amended claimed features of "a first layer comprising an adhesive and a second layer comprising a color former coated thereon" and "second layer is separate from said first layer", Posa discloses **"In the preferred embodiment, the substance is contained within the flexible material itself, though one or more layers may be added to the material to carry the substance"** (column 2 lines 5-10). Further, according to Posa, "As a further...color-changing compounds may instead be contained within microcapsules, **preferably applied to the adhesive side of the tape base.**" (column 5 lines 15-20). This disclosure of Posa is interpreted to read on the aforementioned newly amended claim features.

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10. Further, Posa teaches that "In an alternate embodiment...one or more materials may be added to the base layer and/or adhesive, or used in conjunction with the adhesive, causing a cut or torn edge to be visually evident through mechanisms other than fluorescence. As one example, a chemical agent may be added to the adhesive, which when exposed to oxygen [equated to color developer since Applicant has not specify what type of color developer he/she is using in the claims], results in a color change causing a newly-formed edge to become visually evident." (column 4 lines 54-61).

11. As a chemical agent Posa discloses lecuodye (column 5 lines 1-5) which is equated to claimed color former. Moreover, Posa discloses that the color-changing compounds [color former] may instead be contained within microcapsules, preferably applied to the adhesive side of the tape base. As such when the tape is cut, torn or severed, microcapsules are broken, enabling the material which discolors to flow therefrom. Such a material may be of various alternative types, including...materials such as those mentioned above, which discolor upon exposure to oxygen." (column 5 lines 15-30).

12. As to the claim requirements of when a portion of said length of support material is separated from a remainder of said length of said support material, wherein said demarcation is of contrasting color to said support material, these limitations are obvious in view of the aforementioned disclosure of Posa, motivated by the desire to form a roll of tape where a free end can be easily identified.

### ***Response to Arguments***

13. Applicant's arguments filed on 08/05/08 have been fully considered but they are not persuasive.

14. Applicant argues that Posa reference "do not present a color developer that is present in a separate layer as required by amended Claim 35." The Examiner respectfully disagrees for the following reasons:

15. Nothing in claim 35 is specific about the nature of the color developer and how the color developer is present in the support material. Further, the claim does not preclude the adhesive tape from air exposure at the tear site. As previously discussed, Posa discloses the adhesive tape comprising a backing layer and an adhesive layer coated on at least one side of the backing layer wherein the backing layer includes an oxygen-activated material. When the tape is cut, the oxygen-activated material changes color upon exposure to air. That is exactly the same mechanisms through which the color change is generated by the claimed invention. Accordingly, the art rejections are sustained.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date

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of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANISH DESAI whose telephone number is (571)272-6467. The examiner can normally be reached on Monday-Friday, 8:00AM-4:30PM.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. D./

Examiner, Art Unit 1794

/Hai Vo/

Primary Examiner, Art Unit 1794